

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

EKHAYA YOUTH PROJECT, INC.  
Respondent

And

Case Nos. 15–CA–155131  
15–CA–162082

DALANA ZIPPORAH MINOR  
An Individual

**COUNSEL FOR THE GENERAL COUNSEL’S CROSS-EXCEPTIONS TO THE  
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

The Counsel for the General Counsel (Counsel), hereby files the following Cross-Exceptions to the Factual Findings, Legal Conclusions, and Remedial Order of the Administrative Law Judge’s Decision (ALJD) dated July 15, 2016.

Cross-Exception No. 1

Counsel excepts to the legal conclusion that on about June 18, 2015, Respondent did not violate Section 8(a)(1) of the Act when Chief Operating Officer VanShawn Branch (COO Branch) instructed Dalana Zipporah Minor (Minor) by text, “Please do not have any conversations with staff or it could possibly effect [sic] the outcome of the investigation,” as alleged in Paragraph 5(a) of the Amended Consolidated Complaint and Notice of Hearing (Amended CNOH). (ALJD 8:9-11).<sup>1</sup>

Cross-Exception No. 2

Counsel excepts to the legal conclusion that Respondent did not maintain or apply a rule prohibiting employees from discussing their salaries alleged as unlawful in

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<sup>1</sup> References to the transcript appear as (Tr. ##:##). The first number refers to the pages; the second to the lines. References to the Decision appear as (ALJD ##:##).

Paragraph 6 of the Amended CNOH. (ALJD 9:12-20,13:24-28, 14:45-15:10).

Cross-Exception No. 3

Counsel excepts to the legal conclusions that Respondent did not violate the Act by maintaining and/or applying the rules alleged as unlawful in Paragraph 7(b) of the Amended CNOH.<sup>2</sup> (ALJD 14:26-15:10).

Cross-Exception No. 4

Counsel excepts to the legal conclusion that Respondent did not violate the Act by maintaining and/or applying the rules alleged as unlawful in Paragraph 7(c) of the Amended CNOH. (ALJD 14:26-15:10).<sup>3</sup>

Cross-Exception No. 5

Counsel excepts to the legal conclusion that Respondent did not violate the Act by maintaining and/or applying the rule alleged as unlawful in Paragraph 7(d) of the Amended CNOH. (ALJD 14:26-15:3).

Cross-Exception No. 6

Counsel excepts to the legal conclusion that Respondent did not violate the Act by maintaining and/or applying the rule alleged as unlawful in Paragraph 7(e) of the Amended CNOH. (ALJD 14:26-15:3).

Cross-Exception No. 7

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<sup>2</sup> To the extent that the ALJ found subpart eight (8) of the rule barring employees from “Inappropriate familiarity among staff members (will not occur in the facility or during any program function),” unlawful under Section 8(a)(1) of the Act, it is not included in this exception.

<sup>3</sup> To the extent the ALJ may have found subpart four (4) of the rule barring employees from disclosing “4. *Personnel* Information,” (emphasis added) unlawful under Section 8(a)(1) of the Act, it is not included in this exception. The ALJD unclearly states that Respondent violated Section 8(a)(1) by maintaining, “The rule prohibiting the disclosure of *personal* information.” (ALJD 14:41-42 (emphasis added)). In an abundance of caution, Counsel excepts to the failure to find both subparts of the rule unlawful.

Counsel excepts to the legal conclusion that Respondent did not violate the Act by implementing and maintaining the rules alleged as unlawful in Paragraph 8 of the Amended CNOH. (ALJD 15:12-40).

Cross-Exception No. 8

Counsel excepts to the legal conclusion that the suspension of Minor and the terminations of Minor and Nicholas Davis (Davis) did not violate the Act and were not in retaliation for their protected concerted activities or to discourage protected concerted activities. (ALJD 12:2-10, 13:13-20, 14:2-7, 16:7-8).

Cross-Exception No. 9

Counsel excepts to the legal conclusions that Davis and Minor did not engage in activities protected by the Act. (ALJD 12:2-10, 13:1-3, 13:7-13, 13:24-35, 14:4-7, 16:7-8).

Cross-Exception No. 10

Counsel excepts to the ALJ's failure to find that Minor's discussions about her salary were protected concerted activity. (ALJD 5:35-36).

Cross-Exception No. 11

Counsel excepts to the ALJ's refusal to find that Minor and Davis were terminated pursuant to unlawful work rules. (ALJD 16:1-8).

Cross-Exception No. 12

Counsel excepts to the ALJ's legal conclusion that Davis and Minor's text messages or discussions were flagrantly disloyal and wholly incommensurate with any grievances they or any other employees had with COO Branch or that any protected activity engaged in by Davis and Minor is outweighed by the Respondent's right to

maintain order and respect. (ALJD 12:5-10, 12:35-37, 13:13-20, 14:2-4).

Cross-Exception No. 13

Counsel excepts to the ALJ's failure to add Davis to the Amended CNOH as an unlawfully discharged employee. (ALJD 12:fn.13).

Cross-Exception No. 14

Counsel excepts to the form of the Notice to Employees because it is not sufficiently specific in its drafting to give Respondent's employees notice of the violations found in the ALJD. (ALJD Appendix).

Cross-Exception No. 15

Counsel excepts to the Order and Notice to Employees to the extent that they do not reflect the conclusions of law urged by Counsel by the exceptions herein. (ALJD 16-17, Appendix).

Cross-Exception No. 16

Counsel excepts to the ALJ's failure to find Minor and Davis engaged in protected concerted activity on or about June 8, 2015, when they discussed how raises are given to employees, how the anti-fraternization policy was not enforced because COO Branch and Chief Executive Officer Darrin Harris (CEO Harris) were in a relationship, how employees were scared of termination and of making paperwork mistakes, and the compensation of college graduates as compared to non-graduates by the Respondent, and that Respondent had knowledge of this protected concerted activity. (ALJD 2:26-41, 13:24-25, 14:4-7).

Cross-Exception No. 17

Counsel excepts to the ALJ's failure to find that Respondent had knowledge of

the substance of the conversation between Minor, Yvette Frazier (Frazier), Kenedra Graves (Graves) and Stephanie McGrew (McGrew) at the time COO Branch sent the email to those four employees at 1:20 am on June 18, 2015. (ALJD 2:26-41).

Cross-Exception No. 18

Counsel excepts to the ALJ's failure to find that the e-mail sent by COO Branch on June 18, 2015, instructing Minor, Frazier, Graves, and McGrew not to close the door to their office, not to have any meetings in their office without prior authorization from an immediate supervisor, and not to hold meetings without minutes and a sign-in sheet was a new policy implemented because the employees engaged in the protected activity of discussing employees' job descriptions, employees' lack of clarity on job descriptions, and COO Branch. (ALJD 2:26-41).

Cross-Exception No. 19

Counsel excepts to the ALJ's failure to find that Branch told Minor not to disclose any staff person's pay rate, including her own, to any other staff person who is not privy to that information. (ALJD 5:30-36, 9:6-19).

Cross-Exception No. 20

Counsel excepts to the ALJ's finding that COO Branch was only discussing salary information of employees that Minor became privy to in the course of her official duties and disseminated without consent of other employees, when COO Branch told Minor at some time in June 2016 that all employee wage information besides the minimum wage is proprietary and confidential and could not be discussed between employees. (ALJD 5:20-21, 5:33-35, 9:15-17, 13:27-28, 13:fn.15).

Cross-Exception No. 21

Counsel excepts to the ALJ's finding that Frazier complained to COO Branch at any time that Minor was discussing Frazier's salary publicly. (ALJD 5:20-21, 5:32-36, 13:27-28).

Cross-Exception No. 22

Counsel excepts to the ALJ's failure to find that the texting between Minor and Davis regarding COO Branch's treatment of a fellow employee was protected concerted activity. (ALJD 3:21-4:27).

Cross-Exception No. 23

Counsel excepts to the ALJ's failure to find that the texting between Minor and Davis regarding COO Branch's management skills was protected concerted activity. (ALJD 3:21-4:27).

Cross-Exception No. 24

Counsel excepts to the ALJ's failure to find that the texts between Minor and Davis about COO Branch about Branch were protected activity relating to the work rule prohibiting fraternization among staff members. (ALJD 3:27-28, 3:34-40, 4:1-27).

Cross-Exception No. 25

Counsel excepts to the ALJ's failure to find that Davis and Minor thought the text messages were private between the two employees prior to Minor being summoned to a meeting with Branch and Sumler on June 18, 2015. (ALJD 5:15-28).

Cross-Exception No. 26

Counsel excepts to the ALJ's finding that supervisor Vanessa Sumler (supervisor Sumler) sent Minor an email on June 18, 2015, at 3:09 pm. (ALJD 4:33-37).

Cross-Exception No. 27

Counsel excepts to the ALJ's finding that Minor told Graves or any other employees anything about a conversation and/or text messages between Minor and Davis. (ALJD 5:1-17, 12:4-5, 12: fn14, 12: 35-37, 13: 3-4, 13: 9-10).

Cross-Exception No. 28

Counsel excepts to the ALJ's finding that the assertions of the email allegedly sent by COO Branch's cousin on June 18, 2015 are accurate and true. (ALJD 5:1-17, 12:4-5, 12:fn.14, 12:35-37, 13:9-10, 13:3-4).

Cross-Exception No. 29

Counsel excepts to the ALJ's finding that Minor did not deny discussing the texts between her and Davis with coworkers or gossiping about COO Branch's sexuality on June 18, 2015. (ALJD 5:15-16).

Cross-Exception No. 30

Counsel excepts to the ALJ's finding that as part of Respondent's investigation into Minor and Davis' alleged misconduct that supervisor Sumler was interviewed as part of the investigation. (ALJD 6:6-7).

Cross-Exception No. 31

Counsel excepts to the ALJ's failure to find that Nora Rowan did not interview Davis prior to Respondent terminating him. (ALJD 6:6).

Cross-Exception No. 32

Counsel excepts to the ALJ's finding that there is no evidence or indication that Respondent believed Davis and Minor engaged in protected activity. (ALJD 14:4-5).

Cross-Exception No. 33

Counsel excepts to the ALJ's failure to further amend the Amended CNOH as

requested by Counsel at the start of the hearing on May 2, 2016, and find that Respondent violated the Act based on these amendments. (ALJD 1:34-39).

Respectfully Submitted,

/s/ Amiel J. Provosty

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2016, I electronically filed a copy of the foregoing COUNSEL FOR THE GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE with the National Labor Relations Board and forwarded a copy by electronic mail to the following:

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